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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/857,348

07/24/2001

Fredrik Persson

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VENABLE LLP

P.O. BOX 34385

WASHINGTON, DC 20043-9998

EXAMINER

MACARTHUR, VICTOR L

ART UNIT

PAPER NUMBER

3679

MAIL DATE

DELIVERY MODE

07/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 09/857,348</p>	<p><b>Applicant(s)</b> PERSSON ET AL.</p>	
	<p><b>Examiner</b> VICTOR MACARTHUR</p>	<p><b>Art Unit</b> 3679</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 July 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 23,24,26-28,30,32,33 and 35-39.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/Victor MacArthur/  
Primary Examiner, Art Unit 3679

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive.

All of applicant's claimed limitations are met by the prior art within the broadest reasonable interpretation of the claim language. Subject matter that is not recited in the claims cannot be relied upon to persuasively argue for allowability. Claimed limitations cannot be persuasively argued to have a scope narrower than that, which is reasonably most broad. In a product claim, intended use, labeling and functional language cannot overcome the prior art wherein the prior art discloses structure fully capable of performing such uses and functionality. Capability need not be expressly stated in the prior art wherein it is inherent to the structure. Such inherency of functional capability is presumed to be present in the prior art structure until applicant proves otherwise with submission of actual evidence, in accordance with MPEP 2112.01(I). Motivation to combine the references comes from knowledge generally available to one of ordinary skill in the art and the references themselves. The Supreme Court has consistently held that where all of the pieces of the invention are known in the prior art it is not patentable to combine known pieces, even to produce beneficial results, unless those results are unexpected and unpredictable. That is to say that if cogent reasoning, based in no part upon hindsight, demonstrates predictability of the new result, a patent will not issue. See *In Re Hotchkiss v. Greenwood*, 52 U.S. 248, which stated that even beneficial results of being "made firm and strong, and more durable" do not render an invention patentable over the prior art if those results are predictable; see also *In re KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385 (U.S. 2007), which states "[T]he results of ordinary innovation are not the subject of exclusive rights under the patent laws. Were it otherwise patents might stifle, rather than promote, the progress of useful arts. See U.S. Const., Art. I, section 8, cl.8."

Lastly, drawings and pictures anticipate claims if they show the structure which is claimed. The origin of a drawing used as prior art is immaterial and it does not matter that the feature shown is unintended or unexplained. *In re Aslanian*, 590 F.2d 911. 200 USPQ 500 (CCPA 1979). See MPEP § 2125.